

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HAYWARD UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010101190

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT AND
ORDER ON DISTRICT MOTION TO
DISMISS

On October 25, 2010, Student filed a Due Process Hearing Request¹ (complaint) on an OAH form. The complaint identified that Student attended Southgate Elementary in Hayward, California, but did not identify Hayward Unified School District (District) as a party. It does not appear that the complaint was served on District. The first problem identified is an allegation that Student was the victim of abuse by an aide in class. The second problem identified is that an aide in Student's class has a temper. The third problem identified is that a school principal lacks empathy. As a proposed resolution to the third problem, Student alleges that another parent informed Student's parent that the abuse consisted of slamming a child into a corner, jerking clothes, fear, pushing and throwing chairs.

On November 19, 2010, District timely filed a Notice of Insufficiency (NOI), alleging that Student's complaint did not provide it with proper notice of the problems and proposed resolutions for hearing. The NOI was timely, based on District first receiving the complaint on November 8, 2010. District also filed a motion to dismiss the complaint on the grounds that OAH could not consider it because it could not be determined if the issue was within OAH jurisdiction and because the District had not been named by Student as a party. As discussed below, the complaint is not sufficient; however Student will be given a chance to amend it. Because Student will have a chance to amend it, District's motion to dismiss is denied at this time.

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Parents have the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc., OAH will not dismiss claims that have otherwise been properly pleaded.

DISCUSSION

Here, the complaint is insufficient because it fails to list the District as a party and does not give the District sufficient notice of the problems for hearing. Specifically, although Student alleges some abuse from an aide, Student needs to explain exactly what is happening and how it impacts the provision of special education. Similarly, the complaint contains no proposed resolutions to the problem. Without specific allegations, related facts, and proposed resolutions, District cannot respond. Thus, the complaint is insufficient.

To the extent District seeks dismissal for lack of jurisdiction, it cannot be determined at this time what Student is alleging and against whom. Accordingly, because it cannot be determined that the complaint on its face is outside OAH jurisdiction, the motion to dismiss is denied.

ORDER

1. Student’s complaint is insufficient under Title 20 United States Code section 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II). The filing of an amended complaint will restart the applicable timelines for a due process hearing. Parents are advised that under Education Code section 56505, a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parents are encouraged to contact OAH at (916) 263-0880 for assistance in amending their due process hearing request.

3. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

4. If Student fails to file a timely amended complaint, the matter will be dismissed.

5. District's motion to dismiss is denied in light of the above Order.

6. All dates previously set in this matter are vacated.

Dated: November 23, 2010

/s/

RICHARD T. BREEN

Administrative Law Judge

Office of Administrative Hearings